

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 5989 OF 2022

Sardar Kulwantsingh Jaswantsingh
Khanduja .. Petitioner

Versus

Chagabai Raghunath Gadekar
and others .. Respondents

Shri Pramod F. Patni, Advocate for the Petitioner.
Shri Nitin Jagadale, Advocate h/f Shri V. D. Salunke, Advocate
for the Respondent Nos. 9A to 9F.

**CORAM : SHARMILA U. DESHMUKH, J.
DATE : 30TH JANUARY, 2023.**

FINAL ORDER :

. By this petition, petitioner challenges the order dated 21st February, 2022 passed by the Civil Judge Senior Division, Aurangabad below Exhibit 01 in L.A.R. No. 07 of 2017 issuing notice to the legal heirs of the deceased objection petitioner No. 2.

2. Heard learned counsel appearing for the parties.

3. Learned counsel for the petitioner submits that the property which was subject matter of acquisition was mortgaged with the bank and one Zubedabegum was the original borrower. As the borrower was in default, recovery certificate was issued U/ Sec. 101 of the Maharashtra Co-operative Societies Act, 1960, which resulted into auction of the property, in which the petitioner is the successful auction purchaser. The auction came to be challenged by way of writ petition bearing Writ Petition No.

7128 of 2008 and the auction came to be confirmed by this Court. He would submit that subsequently the property was acquired and the award was passed in favour of the petitioner as against which a dispute as far as disbursement of compensation is concerned was raised by the Central Bank as well as by the said Zubedabegum through her general power of attorney holder namely Ferozkhan Asad Parwez. As far as dispute with the Central Bank is concerned, same has resulted into compromise in which the petitioner has agreed to part with certain amount of compensation awarded for the property. He would further submit that the respondents herein, who are the legal heirs of said Zubedabegum, did not have any right in the property and as such it is not necessary for the legal heirs to be brought on record in L.A.R. No. 07 of 2017.

4. *Per contra*, learned counsel for respondent Nos. 9A to 9F supports the impugned order. He would submit that after raising the dispute as far as award of the compensation for the acquisition of land is concerned Spl. C. S. No. 02 of 2015 has also been instituted by the said Zubedabegum for declaring that the attachment of the land is null and void and not binding on the plaintiff. He would submit that as Special Civil Suit No 02 of 2015 has not yet been decided, it cannot be contended that Respondents have no right in the property.

5. Considered the rival submissions of the parties.

6. It is not in dispute that as far as auction is concerned, same has been confirmed by this Court and as such the petitioner is successful auction purchaser. In the proceedings

before the Special Land Acquisition Officer said Zubedabegum has raised an objection as to the disbursement of the compensation which came to be referred to the Civil Court and the same is pending for adjudication. As during the pendency of L.A.R. No. 07 of 2017, Zubedabegum has expired and the Reference Court has directed the legal heirs to be brought on record, considering the fact that there is dispute about entitlement of the persons to the compensation in as much as Zubedabegum claimed a right in the compensation before the Special Land Acquisition Officer, which has resulted in the reference L.A.R. No. 07 of 2017, it is necessary that same be taken to its logical end. During the pendency of the reference as the original objection petitioner i. e. Zubedabegum has expired, for deciding the dispute as regards the disbursement of compensation is concerned, it is necessary the legal heirs to be brought on record and the claim of Zubedabegum cannot be brushed aside by reason that she was original borrower and her property was put to auction and it is now been purchased by the petitioner. All these issues will be required to be considered by the Reference Court.

7. Learned counsel for the petitioner further submits that the petitioner be permitted to withdraw the compensation by furnishing adequate security. In the proceedings before this Court the challenge is to the order of the Reference Court issuing notice to the legal heirs of Zubedabegum and in this context this Court is not required to examine the validity of the application which is proposed to be filed by the petitioner for withdrawal of the amount and the same can be considered by the Reference Court.

8. Learned counsel for the petitioner further submits that the respondent Nos. 9A to 9F, who are legal heirs of the deceased respondent No. 9 be directed to appear before the Reference Court so that proceedings can be culminated expeditiously.

9. Considering the above following order is passed.

O R D E R

- A. Writ petition being devoid of merits is dismissed.
- B. The respondent Nos. 9A to 9F to appear before the Reference Court on 15.02.2023.
- C. Liberty to the petitioner to make appropriate application before the Reference Court for withdrawal of amount by furnishing security, which will be considered by the Reference Court on its own merits and in accordance with law.
- D. The Reference Court to decide L.A.R. No. 07 of 2017 expeditiously and in any event before the expiry of period of six (06) months from the date of this order.

[SHARMILA U. DESHMUKH, J.]

bsb/Jan. 23